

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, MAY 13, 2005
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:06 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Toby Martyn (arrived at 10:15 a.m.)

Mr. Timothy Johns
Mr. Gerald DeMello
Mr. Ron Agor

STAFF

Mr. Harry Yada, Land
Ms. Athline Clark, Aquatics
Ms. Lauren Tanaka, State Parks
Mr. Paul Conry, DOFAW
Mr. Eric Hirano, Engineering
Mr. Mike Shinozuka, DOT

Mr. Sam Lemmo, OCCL
Mr. Dan Quinn, State Parks
Mr. Jim Springer, State Parks
Mr. Francis Oishi, Aquatics
Mr. Andy Monden, Engineering

OTHER

Mr. William Wynhoff, Deputy Attorney General
Mr. Russell Tsuji, Deputy Attorney General
Mr. Steven Lim, K-1
Mr. Randall Urasaki, K-4
Mr. Robert Klein, M-2
Mr. Ken Harada, D-21
Mrs. Linda Orosco, D-17
Mrs. Kelly Griffin, D-11
Mr. Clyde Namuo, F-1

Mr. Walton Hong, K-3
Ms. Sandy Padaken, D-6
Mr. Mitchell Miyoshi, D-2
Mr. George Orosco, D-17
Mr. Glenn Griffin, D-11
Mr. Steve Toukildson, D-9
Mr. Henry Curtis, F-1

Mr. Roy Morioka, F-1
Ms. Cindy Hunter, F-1
Mr. Paul Achitoff, F-1
Mr. Jim Cook, F-1
Ms. Mariann Anderson Kelley, F-1
Mr. Wadsworth Yee, F-1
Ms. Cha Smith, F-1
Ms. Linda Paul, F-1
Ms. Anela Maunakea, F-1
Ms. Ellen Tong, F-1
Ms. Stephanie Fried, F-1
Mr. Craig Chapman, E-1

Senator Fred Hemmings, F-1
Mr. Dave Rainey, F-1
Dr. Jim Anthony, F-1, E-1
Ms. Kim Timiny, F-1
Mr. Buzzy Agard, F-1
Ms. Carol Wilcox, F-1
Mr. David Smith, F-1
Ms. Aulani Wilhelm, F-1
Mr. Jeff Mikulina, F-1
Mr. William Aila, F-1
Ms. Vickie Holt Takamine, F-1

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of November 22, 1996, Item D-14

The Board made the following change to page 13, Item D-14 with reference to the TMK number, which should read TMK: 1st/ 1-2-23 (various).

Unanimously approved as amended (Johns/Yamamura).

Item A-2: Minutes of February 25, 2005, Item A-1

The Board changed the title of Item A-1 to read:

“Minutes of February 11, 2005”

Unanimously approved as amended (Johns/Yamamura).

Item A-3: Minutes of March 11, 2005, Item A-1

The Board changed the title of Item A-1 to read:

“Minutes of February 25, 2005”

Unanimously approved as amended (Johns/Yamamura).

Item A-4: Minutes of April 1, 2005

Unanimously approved as submitted (Johns/Yamamura).

Item A-5: Minutes of April 22, 2005

Unanimously approved as submitted (Johns/Yamamura).

Item K-1: Enforcement File No. HA-05-21, Regarding Alleged, Unauthorized Grading, Grubbing, and Culvert construction, and Failure to Resolve Prior Land Uses on Privately-owned Land, Paho Beach and Waipiele Gulch, Hawaii, Subject Parcel TMK: (3) 5-5-008:067 by Ahmed Mohammadi, E Commerce Enterprise Corporation, P.O. Box 219, Hawi, Hawaii, 96719.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) let it be known the alleged violation took place on a 21-acre parcel located in the Conservation District in the town of Hawi, North Kohala, Island of Hawaii. On September 21, 2004, staff from the Division of Conservation and Resource Enforcement (DOCARE) conducted a site inspection of the subject parcel. Their inspection revealed that grubbing and grading as well as a drainage channel being excavated along the east side of the gulch. The landowner also constructed a road into the gulch. This road is located in the State zoned Agricultural District. On September 22, 2004, OCCL sent to letters two the landowner, one being a Notice and Order to cease any further work and the other to submit a Best Management Practices Plan for the impacted area within five working days. The purpose of the Best Management Practices Plan was to begin taking immediate remediation erosion control measures to prevent the discharge of sediments into the marine area. Staff is alleging the landowner committed four violations: 1) the grubbing and grading of the gulch; 2) the construction of drainage culvert; 3) failure to resolve a prior violation (fence and gate); and 4) failure to submit the Best Management Practices Plan in a timely manner. Mr. Lemmo recommended the Board find the landowner in violation of Chapter 183C HRS and Chapter 13-5, Hawaii Administrative Rules and is subject to the conditions listed in staff's submittal.

Steven Lim, attorney for the landowner came forward and accepted responsibility for his client's actions. Mr. Lim acknowledged his client tried to clear out the public coastal area from storm debris. He also told the Board his client has already filed a Special Management Application for the road access but will amend the application to include the fence and gate which were the subject of a 2003 HOAPS violation. Mr. Lim pointed out two-thirds of the grass in the Conservation District has grown back and his client has placed textile material along the slopes. As far as their proposed remediation plan, his client hopes to begin work in June as they are awaiting supplies. In closing, Mr. Lim noted his agreement with staff's recommendation.

Written testimony was received from Michelle Kerr.

Unanimously approved as submitted (DeMello/Johns).

Item K-3: Enforcement File No. KA-04-33, Regarding Alleged Unauthorized Landscaping Action at Haena, Kauai, Subject Parcel TMK: (4) 5-9-002:025 by the Nellie and Cookie Trust, 760 North La Cienega Boulevard, Los Angeles, California 90069, c/o Walton Hong, 3135 Akahi Street, Suite A, Lihue, Kauai.

Mr. Lemmo conveyed the 24,000 square foot subject parcel is located in the Haena District of the Island of Kauai. On April 12, 2004 the Department received a letter from the trust's lawyer, Walton Hong regarding a possible landscaping violation that may have occurred on the subject

parcel. In the letter, Mr. Hong stated when the Board approved a CDUP for the adjoining parcel in the 1990's the adjoining landowner accidentally did work on the Nellie and Cookie Trust parcel as well. During the construction of the single-family residence the contractor had landscaped the Nellie and Cooke trust under the belief the landscaping action was covered under CDUA KA-2756. Mr. Lemmo recommended the Board find that the Nellie and Cookie Trust in violation of HRS, Chapter 183C and HAR, Chapter 13-5 and is subject to the conditions listed in staff's submittal.

Walton Hong representing the Nellie and Cookie Trust let it be known this was not a deliberate violation, it was an unknowing violation. He told the Board when they realized the adjacent landowner landscaped the trust property he contacted the Department to make them aware of the violation. Mr. Hong asked the Board to go along with staff's recommendation.

The Board asked Mr. Lemmo why this case was not referred to the HOAPS program. Mr. Lemmo noted the size of the area landscaped was quite large therefore it was brought to the Board for final disposition.

The Board amended the Recommendation Section as follows:

1) Recommendation 3)

“That the Nellie and Cookie Trust shall pay all fines (total [~~\$,1,000.00~~] \$3,000.00) within thirty (30) days of the date of the Board's action;”

Unanimously approved as amended (Agor/Johns).

Item K-4: Conservation District Use Application (CDUA) OA-3219, Fiber Optic Telecommunications System by Sandwich Isles Communications, Inc., Sandy Beach Park, Wawamalu, Island of Oahu, TMK: (1) 3-9-015:001 and Submerged Waters Off of TMK: (1) 3-9-012.

Mr. Lemmo reminded the Board Sandwich Isles Communication Inc. (SIC) was granted a license by the State of Hawaii Department of Hawaiian Home Lands (DHHL) to provide modern telecommunications infrastructure for its properties at no cost to DHHL. Many Hawaiian Home Lands are in rural areas with little access to basic infrastructure. SIC is installing terrestrial fiber-optic cable networks on Oahu generally using State and County road Rights-of-Way. To connect the island networks, SIC has proposed to construct and operate approximately 30 miles of submarine fiber optic cables statewide which will be divided into four segments. On July 9, 2004, the Board approved a Conservation District Use Application for the landing sites except for the Sandy Beach Park landing site as SIC was unable to obtain a Special Management Area use permit for the subject area. Mr. Lemmo went over what is involved in accomplishing this project. Mr. Lemmo recommended the Board approve this application for the Fiber Optics Telecommunications System located at Sandy Beach Park TMK: (1) 3-9-015: 001 and offshore in submerged State waters of TMK: (1) 3-9-012.

Unanimously approved as submitted (Johns/Yamamura).

Item K-2: Enforcement File No. OA-03-09, Regarding Alleged Unauthorized Cutting of Thirty-One Eucalyptus Trees by Carl Shiramizu and Darrel Sakai on Subject Parcel TMK: (1) 9-8-073:004, Aiea, Oahu, owned by Kamehameha Schools, 567 South King Street, Honolulu, Hawaii 96813.

Motion to defer

Unanimously approved to defer (Johns/Yamamura).

Item M-1: Report on Revocable Permits Issued or Renewed by the Department of Transportation for Inconsistent Uses.

Unanimously approved as submitted (Johns/DeMello).

Item M-2: Bar-K, Inc.'s Assumption of Lease No. DOT-A-92-0011, South Ramp Area, Honolulu International Airport.

Mike Shinozuka representing the Department of Transportation came forward and recommended the Board approve and give its consent to an Assumption of Lease No. DOT-A-92-11.

Unanimously approved as submitted (Johns/DeMello).

Item D-6: Amend Prior Board Actions of August 9, 2002, Item D-7, After the Fact Grant of Perpetual, Non-Exclusive Easement to Time Warner Entertainment Company, dba: Sun Cablevision; Issuance of Construction Right-of-Entry for Utility Purposes at Puuanahulu to Keahole, North Kona, Hawaii, Tax Map Keys: 3rd/7-1-02:01; 7-1-03:01; 7-2-04:04; 7-2-05:08; and 7-3-10:33.

Harry Yada, Acting Administrator of the Land Division confirmed Oceanic would be co-locating its transmission lines onto existing Hawaiian Electric Light Company (HELCO) poles. Due to this co-location Oceanic will not be requiring a 100-foot wide easement but instead would like to request a twenty feet width over the revised alignment. Mr. Yada recommended the Board authorize the issuance of a perpetual-non-exclusive easement to Sun Cable covering the subject area for utility purposes and grant an immediate Right-of-Entry to Time Warner Entertainment Company dba Sun Cablevision , its contractors and/or persons acting for or on its behalf subject to the conditions listed in the submittal.

Sandy Padaken representing Oceanic Time Warner noted her agreement with staff's submittal.

Unanimously approved as submitted (DeMello/Johns).

Item D-2: Grant of Perpetual, Non-Exclusive Easement to Time Warner Telecom of Hawaii, L.P., for Underground Utility Purposes, Wailua, Lihue, Kauai, Tax Map Key 3-9-2: por.4.

Mr. Yada pointed out the applicant is requesting an easement and construction right-of-entry to install a fiber optic telecommunication cable under the Wailua golf course as part of statewide submarine fiber optic telecommunication system. Mr. Yada recommended the Board authorize the issuance of a perpetual non-exclusive easement to Time Warner Telecom of Hawaii, L.P. covering the subject area for access and utility easement purposes and authorize the issuance of an immediate construction right-of-entry to Time Warner of Hawaii, L.P. and its employees, agents or contractors under the terms and conditions cited in the submittal.

Mitchell Miyoshi representing Time Warner Telecom was present.

Unanimously approved as submitted (Agor/Johns).

Item D-21: Grant of Perpetual, Non-Exclusive Easement to Department of Hawaiian Home Lands for Drainage Purposes, Kekaha, Waimea, Kauai, TMK: (4) 1-2-02: por.32, and Issuance of Immediate Construction Right of Entry.

Mr. Yada disclosed the Department of Hawaiian Home Lands (DHHL) is requesting the subject easement in connection with its development of 42 single-family residential lots in Kekaha. DHHL is requesting this drainage easement to handle drainage from the project. Mr. Yada recommended the Board authorize the issuance of a perpetual, non-exclusive easement to the Department of Hawaiian Home Lands covering the subject area for maintenance and drainage purposes.

Unanimously approved as submitted (Agor/Johns).

Item D-17: Consent to Assign Grant of Easement No. S-4543, George and Linda Orosco, Assignors, to Terance and Dorene McTigue, Assignee, Kawailoa, Waialua, Oahu, Tax Map Key: 6-1-08:31.

Mr. Yada briefed the Board and recommended the Board consent to the assignment of Grant of Easement No. S-4543, George and Linda Orosco, Assignors, to Terance and Dorene McTigue, Assignee.

Unanimously approved as submitted (Johns/DeMello).

Item D-12: Consent to Mortgage and Extension of Lease Term, General Lease No. S-3761 Windward Plants Incorporated, Lessees, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:044.

Mr. Yada pointed out the applicant plans to use the proceeds from the loan to construct a 2,500 square foot shade house on the subject property. Mr. Yada recommended the Board consent to the mortgage between Windward Plants Incorporated, Mortgagor and Federal Land Bank Association of Hawaii, FLCA, Mortgagee and authorizes the extension of General Lease No. S-3761 under the terms and conditions listed in the submittal.

Shannon Olivado, representing Windward Plants Incorporated informed the Board they are part of the irrigation system and are currently paying the Department of Agriculture for water used.

The Board amended the Recommendation Section to add the following:

“3. The Lessee shall be responsible for acreage assessment and water charges to the Department of Agriculture for the Waimanalo irrigation system.”

Unanimously approved as amended (Johns/DeMello).

Item D-11: Consent to Assign General Lease No. S-3758, Kazuto Yamada, Assignor, to Glenn Joseph Robert Griffin and Kelly Lei Griffin, Assignee, Consent to Mortgage and Extension of Lease Term, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-010:041.

Mr. Yada briefed the Board and recommended the Board consent to the assignment of General Lease No. S-3758, Consent to the mortgage between Glenn J. Griffin, Mortgagor, and First Hawaiian Bank, Mortgagee and authorize the extension of General Lease No. S-3758 up to and including December 1, 2018 subject to the terms and conditions listed in staff's submittal.

The Board made the following changes:

1) Rental reopenings

“Reopening in the original term was done on April 7, 1987. The last rental reopening occurred on April 7, 1977 [~~when the tenant requested for a lease extension of 23 years~~].

Reopening for the extended term shall be on May 13, 2005 (immediate reopening), May 13, 2015 (approximately 10th year of additional term).”

2) Consideration

“~~[\$10,000.00]~~ \$50,000.00”

3) Recommendation 2)

“Consent to the mortgage between Glenn J. Griffin, Mortgagor, and First Hawaiian Bank, Mortgagee not to exceed \$40,000.00, subject to the following:”

4) Add the following to the Recommendation Section

“3.D. The Lessee shall be responsible for acreage assessment and water charges to the Department of Agriculture for the Waimanalo irrigation system.”

Unanimously approved as amended (Johns/Agor).

Item D-9: Consent to Amendment to Lease Agreement between Simpson Manor, Inc. and John Henry Felix; Amend Grant of Non-Exclusive Easement S-5610, Honolulu, Oahu, Tax Map Key: (1) 3-6-02:05 Seaward.

Mr. Yada reminded the Board previously in 2000 an easement for fast lands was issued to Simpson Manor, Inc the fee owner of TMK: (1) 3-6-2:5. Currently the subject lands are being leased to John Henry Felix. Based on the language of the easement such transfer of rights to utilize the easement area to other parties requires the consent of the Board. Mr. Yada recommended the Board consent to the Amendment to Lease Agreement between Simpson Manor, Inc. and John Henry Felix and amend Grant of Non-Exclusive Easement S-5610 to include a condition that the easement shall run with the land.

Unanimously approved as submitted (Johns/Agor).

Item C-4: Report on Implementation of Timber Land License No. H-101 held by Tradewinds Forest Products, LLC and a Request to Approve Assignments of Ownership and Amendment of License No. H-101.

Paul Conry, Administrator of the Division of Forestry and Wildlife (DOFAW) conveyed that at the January 28, 2005, meeting Board requested a status report on Tradewinds Forest Products, LLC (TFP) implementation of a Timber Land License as well as their ability to raise capital for the project. In his presentation, Mr. Conry addressed four areas of interest: Securing Startup Funding of \$1,000,000, Assignment of Ownership, Amendment of Section 10.4 of the Timber Land License and plans to change the State of incorporation of the Company. Addressing the issue of securing startup funding, Mr. Conry pointed out TFP has provided copies of signed memorandum of understanding for \$650,000. Mr. Bryan also reported receipt of \$60,000 in cash, a letter of intent for \$400,000 and a verbal commitment of \$350,000. As far as the Assignment of Ownership issue, TFP's license states if the sale or transfer of 20% or more of the ownership occurs the State has the right to terminate this License. In November 2004, Mr. Bryan purchased 50% of TFP's ownership therefore TFP is asking for an after-the-fact approval of this assignment. The third issue discussed was TFP's request to amend section 10.4 of the Timber Land License. TFP is requesting that further approval regarding the transfer of ownership be triggered only when the transfer of ownership equals 50% or more of interest in the company as this will shift control of the company. Lastly, Mr. Conry made mention of Mr. Bryan's intention to change the State of incorporation of the company from Washington to Oregon, where its headquarters and employees are located and its legal investment and accounting counsel reside. Mr. Conry suggested the Board take up this action as a separate submittal when details are known and provided. Mr. Conry recommended the Board approve the Department's continued partnership with TFP, approve the after-the-fact assignment of 50% ownership interest in the company, approve the assignment of approximately 34% ownership interest to Al Jubitz, Michael Clark, Michael Haglund, Gayle Veber, Bob Hansen and Jack Schifferdecker for financing purpose and approve and amendment to Section 10.4 of the Timber Land License by the Department that allows a Board approval process for the assignment of interest in the company of 20% or more, subject to review and approval of the Department of the Attorney General.

The Board noted its concern with TFP being able to obtain the necessary funding for Phase Two of the project when they're having problems with securing the startup funding.

Don Bryan came forward to testify on behalf of TFP. Mr. Bryan communicated that his requirement was to secure commitments for the funding and he believes they've accomplished this objective. Mr. Bryan went on to explain the process of obtaining funding for this project (startup funding as well as funding for Phase Two). Mr. Bryan let it be known TFP will have to obtain at least seventeen permits for this project and feels it should take a year to accomplish this task.

The Board instructed Mr. Bryan when obtaining future funding it does not mean letters of intent, conditional letters of intent or verbal commitments instead it should be something concrete.

The Board amended the Recommendation Section by adding the following

- "5. Approve an amendment to correct the name of Licensee on the Timber Land License No. H-101 from Tradewinds Forest Products LLC to Tradewinds LLC.**
- 6. The Licensee shall provide documentation of securing signed legally binding subscription agreements for start-up funding of \$1,000,000 by July 1, 2005."**

Unanimously approved as amended (DeMello/Agor).

Item C-1: Request for Approval to Enter into Five Contracts to Implement Landowner Incentive Program Projects.

Item C-2: Request for Approval to Enter into Contracts or Purchasing Agreements to Implement Seventeen Hawaii Invasive Species Council Research and Technology Grant Program Projects: with the University of Hawaii for "Methods to Control Alien Algae"; with the USDA Inst. of Pac. Islands Forestry or University of Hawaii for "The Acceleration of Miconia Biocontrol"; with the University of Hawaii for "Biocontrol of Snowflake Coral"; with the USDA Pac. Basin AG. Research CTR for "Nettle Caterpillar Pheromone Study"; with the University of Hawaii for "Coastal Impacts of Invasive Ants"; with the University of Hawaii for a Study on the "Ecology of Snowflake Coral"; with the University of Hawaii for a Pilot Study "Detection & Reporting of Invasives"; with the USDA Inst. of Pac. Islands Forestry or University of Hawaii for the "Testing of Miconia Biocontrol"; with the Bishop Museum for a "Reptile & Amphibian Risk Analysis"; with the USDA Inst. of Pac. Islands Forestry or University of Hawaii for the "Testing of Tibouchina Biocontrol"; with Utah State University for a Study on "Ecological Consequences of Coqui"; with the University of Hawaii for a Study on "Control of Veiled Chameleon" with Leilani Nursery on "Thermal Treatment for Coqui"; with the Hawaii Agriculture Research Center for "Twig Borer Attractants & Repellents"; with the University of Hawaii for a "Study of the Red-Masked Conure"; with

the Hawaii Department of Health for a Study to “Map a New Invasive Mosquito”; with the University of Hawaii for a Study on “Fountain Grass Management”

Item C-3: Request for Approval of Muzzle Loader Hunting for the Control of Sheep Numbers in the Kaohe Game Management Area, Big Island.

Unanimously approved as submitted (Johns/Agor).

Item F-1: Request for Final Approval for New Hawaii Administrative Rule, Chapter 13-60.5, Northwestern Hawaiian Islands Marine Refuge.

Athline Clark, a Planner with the Division of Aquatic Resources (DAR) pointed out this new rule would create the Northwestern Hawaiian Islands (NWHI) Marine Refuge for the purpose of achieving long-term conservation and protection of the unique coral reef ecosystems and the related marine resources and species and to ensure their conservation and natural character for present and future generations. The new rule will allow no access without a permit. The entry permit program will be consistent with the management programs in the adjacent National Wildlife Refuge and the NWHI Coral Ecosystem Reserve. The Board will issue non-transferable permits for up to one year (maximum term allowed). Ms. Clark went over the prohibited as well as the permitted activities included in the refuge. Public hearings on the rules were held in January 2002 and July 2004 statewide. Ms. Clark recommended the Board approve the final draft of the new Hawaii Administrative Rule, Chapter 13-60.5, which creates the Northwestern Hawaiian Islands Marine Refuge.

Clyde Namuo, Administrator of the Office of Hawaiian Affairs (OHA) offered testimony in strong support of the proposed rules. Mr. Namuo also offered two minor amendments, which would clarify and enhance the protections proposed for these precious resources. Regarding the public comment on all permits, he asked the Board to revert back to the original DLNR wording (3-60.5-6) which states: “A public comment period of no less than thirty days.” This will ensure permits are only issued after the beneficiaries of the trust resources have had a change to consult on the issues raised. Secondly, OHA believes an independent permit review by recognized coral ecologist will effectuate the purposes of the refuge by determining if proposed activities may be harmful or degrade the ecosystem. In closing, Mr. Namuo called attention to the written testimony of Buzzy Agard who has extensive experience fishing in the Northwest Hawaiian Islands.

Henry Curtis, Executive Director of Life of the Land offered testimony to strongly support the proposed rule before the Board. Mr. Curtis reiterated the request by OHA, which asked for a public comment period of no less than thirty days. Mr. Curtis also suggested the Department post permit applications on the Departments website. Lastly, he noted his organizations support of the principle of doing no harm even if one believes that all scientific studies are not available.

Roy Morioka, Chairman of the Western Pacific Regional Fishery Management Council noted he supported the Departments effort in taking a proactive management approach by establishing a Marine Refuge in NWHI however, he is concerned that this proposal seeks to immediately

prohibit the continuation of a proven sustainable fishery from occurring in state waters. He asked the Board to allow current fishermen to continue fishing in state waters and let them continue to be the model for long-term protection and resources sustainability for the country and the world.

Senator Fred Hemmings, State Senator representing the NWHI testified in strong support of the rules proposed today and stood by his written testimony.

Cindy Hunter, a coral reef ecologist and member of the NWHI Coral Reef Reserve Advisory Council spoke in support of the proposed rules.

Dave Raney, a retired resident of Hawaii and a volunteer for the Sierra Club and Reef Check read from his written testimony in support of the NWHI rules. Mr. Raney told the Board today, before them is the opportunity and the responsibility to adopt the proposed rules on behalf of the living, those who went before us and those yet to come.

Paul Achitoff, Managing Attorney with the Hawaii Office of Earth Justice spoke in support of staff's recommendation. Mr. Achitoff noted current laws are not adequate in preventing serious harm to public trust resources in the NWHI.

Dr. Jim Anthony, Executive Director of Hawaii Laie Ikawai Association testified in support of staff's recommendation.

Jim Cook, a fisherman in the NWHI read from his written testimony. Mr. Cook spoke of the exploitation by both domestic & foreign fishermen in the NWHI. He pointed out with President Clinton's executive orders came millions of dollars in federal funding that spawned a new industry of NWHI protectors as well as bureaucracy. Mr. Cook feels that fishing and preservation can co-exist. He asked the Board to forget the passion for a moment and remember that a small group of Hawaii's fishermen are about to be disenfranchised. Mr. Cook asked the Board to delay action on this item until the rules governing use of the sanctuary are formed.

Maryann Anderson Kelly spoke about her father, William Anderson who was captain of the Lanikai. She revealed to those present that Lauren Andrews Thurston took pearls from Pearl Harbor and transplanted in the Pearl and Hermes to save them from extinction. From time to time her father would travel to the Pearl and Hermes to retrieve some pearls and turn them over to Mr. Thurston who would sell the pearls on the New York market. Ms. Kelly felt the NWHI is the most important place in the world for birds, seals, fish and other sea animals. She told the Board it is their job to protect these animals that live in the sea.

Kim Timiny a fisherman of the NWHI spoke on behalf of fisherman from Necker and Nihoa. She pointed if the fishery service chooses to do more to prevent over fishing by possibly closing down areas in the main islands the ability for small boat fisherman to survive will be severely impacted. The possible closing of areas in NWHI will have a huge detrimental effect on the fisherman of Necker and Nihoa.

Buzzy Agard who has spent a great deal of time in the NWHI spoke of fishing in the subject area. Mr. Agard spoke of the decline of fish here in Hawaii and the need for him to travel to the NWHI for better fishing opportunities. Mr. Agard went on to speak of the habitat of the fish. He told the Board of the need to protect our ocean resources. Mr. Agard communicated his feeling that individuals should not be allowed into the nursery areas to fish.

Wadsworth Yee, Chairman of the Western Pacific Regional Fishery Management Council's Advisory Panel read from his written testimony and asked the Board to postpone the decision to prohibit fishing in the Marine Refuge as there is no immediate risk to the resources from fishing given the stringent restrictions already in place. Mr. Yee also asked the Board to coordinate a meeting with people who are familiar with fishing in the NWHI to ensure that those directly affected by this proposal are consulted with personally.

Carol Wilcox spoke in favor of the rule proposal before the Board today. Ms. Wilcox pointed out the subject area is of global importance. She feels that the rules proposed are very important in protecting our resources and she believes these rules will not provide a conflict with fishermen. Ms. Wilcox encouraged staff to require those individual given a permit to report any activities they see in the as well as, fill out a report for each trip taken. She also suggested that boat owners be bonded in order to pay for any accidents that could possible occur.

Cha Smith, Executive Director of Kahea spoke in strong support of the proposed rules. Ms. Smith suggested several amendments to the rules including the elimination of references to maps, that permits issued should be first reviewed by an ecologist and lastly that the 30-day public review opportunity is too short.

David Smith, Wildlife Biologist with DOFAW and land manager for Kure Atoll informed the Board DOFAW's rules do not allow landing in Kure Atoll except by permit only. Mr. Smith stated for over a decade he has been pushing for the fishery rules to be changed and feels the rules before the Board is a step in the right direction.

Linda Paul testifying on behalf of the Hawaii Audubon Society spoke in support of the proposed rules. Ms. Paul feels the NWHI are the most isolated coral reefs in the world, with the highest proportion of marine endemic species and unique natural and cultural resources. She urged the Board to delete the phrase "in violation of section 13-60.5-5" from Section 13-60.5.4(2).

Aulani Wilhelm, Acting Reserve Coordinator for NOAA's Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) offered their support for the approval of the NWHI Marine Refuge rules. Ms. Wilhelm went on to read from her written testimony. She pointed out that NOAA has initiated the process to designate the NWHI as our country's 14 national marine sanctuary and is committed to working with the full spectrum of stakeholders on a wide range of resource management issues.

Anela Maunakea let it be known it is our responsibility to protect the NWHI Marine Refuge as a place of refuge for generations to come.

Jeff Mikulina, Director of the Sierra Club, Hawaii Chapter testified in support of the NWHI Marine Refuge rules. He feels the proposed rules address many of the concerns his organization has previously raised. When implemented, Mr. Mikulina believes these rules will set a high standard for conservation. With regards to the permit issue, he agrees that the Board should have the authority to issue and deny all permits but requests that the period for public comment be extended. Mr. Mikulina also suggested that permit applications be reviewed by an independent group of qualified experts.

Ellen Tong, representing the Pacific Fisheries Coalition testified in support of the rules before the Board. Ms. Tong talked about the coral reefs surrounding the NWHI as being pristine as well as having a high biomass of endemic species that occurs nowhere else on earth. As many of her concerns have already been addressed, Mr. Tong spoke on the issue of maritime accidents. She spoke of the millions of dollars spent undoing the harm caused by maritime accidents and feels that cost should be borne by the boat owners and the fishermen.

William Aila, a resident of Waianae spoke in support of the NWHI Marine Refuge Rules. He also spoke of his support that no commercial fishing be allowed in the NWHI. Mr. Aila does not believe there are any traditional and customary rights associated with the taking of resources to barter with others in the NWHI. In the main Hawaiian Islands he believes there is a strong case that commercial fishing is a traditional and customary practice as fishermen were forced to fish due to the changing economy. Mr. Aila cautioned the Board if individuals state they are of Hawaiian ancestry and they've fished in the NWHI for over forty years, this does not qualify as a traditional and customary practice. He urged the Board to remain strong on the belief of what truly is traditional and customary practices.

Stephanie Fried, Senior Scientist with Environmental Defense read from her written testimony in support of the NWHI Marine Refuge. Ms. Fried spoke in support of language that makes it clear that the sole purpose of the refuge designation is the protection of natural and cultural resources, the principle of no access without a permit and the prohibition of fishing in all state NWHI waters. Ms. Fried went on to speak of some important errors and technical changes that need to be changed in the draft rules. Speaking with regards to the issue of maps, she feels there are a number of errors and inconsistencies in the maps associated with the proposed refuge and suggest that any language pertaining to its entry be amended to eliminate dependence on what may be outdated or error-prone maps. Secondly, Ms. Fried is requesting the timetable for public comment on the issuance of permits be amended to provide a longer review period of 90 days. Also that all permits should be reviewed by an independent scientific board made up of recognized coral ecologists. Furthermore, Ms. Fried is suggesting that the permit language be amended to require information on all individuals accompanying the primary permittee, add a clause requiring the posting of a bond or vessel insurance at a level to allow proper remediation in case of an accident or grounding and that the term "live rock" should be added to the section regarding the prohibition of anchoring on corals.

Vickie Holt Takamine came forward and testified in strong support of the proposed rules and echoed the comments made by Stephanie Fried.

Written testimony was received from Maria Tseu, Wayne Higashi, Frank Goto, Brooks Takenaka, William Gilmartin, Michele Nihipali, Kepa and Onaona Maly and David Laist.

The Board amended the following:

- 1) **§13-60.5-2 Boundaries.** For enforcement purposes, the Northwestern Hawaiian Islands marine refuge area shall include, but is not limited to ~~[the islands,]~~ the reefs, and shoals, and their appurtenant reefs and all state waters extending three miles seaward of any coastline beginning and including Nihoa Island and Kure Atoll, but excluding Midway Atoll, ~~[as shown as]~~ as represented generally by fisheries refuges on exhibit “A” map of Nihoa Island. . .
- 2) **§13-60.5-4 Prohibited activities.** Unless otherwise authorized by law, it is unlawful for any person:
 - (1) To enter the refuge without a permit issued . . .
 - (2) To take for the purpose of sale or sell marine life taken from the refuge;
[and]
 - (3) To take marine life in violation of section 13-60.5-5;
 - (4) To set foot on shore, on any emergent land or reef;
 - (5) To engage in any activity, including the anchoring of a vessel that can or does result in damaging or destroying coral;
 - (6) To discharge from a vessel as defined in federal and state law; and
 - (7) To engage in any activity that is not authorized by this chapter. . .
- 3) **§13-60.5-5 Permitted activities.** (a) A person ~~[shall]~~ may, with a valid permit or authorization issued from the board, enter the refuge subject to the restrictions of subsection (b), (c) and (d).
- 4) **§13-60.5-6 Permits.** (a) The board ~~[shall]~~ may issue permits to enter the refuge and conduct activities as provided . . .
- 5) **Prior to the Department issuing any permits under these rules, staff shall report to the Board on the process used in administering these permits.**
- 6) **The Board instructed staff to report back to the Board on the live rock issue and whether live rock should be included in the mainframe prohibition or elsewhere in the rules as a future change.**

Unanimously approved as amended (Johns/Agor).

The Board took a recess at 12:28 p.m. and resumed the meeting at 12:35 p.m.

Item D-1: RE-SUBMITTAL – Withdrawal from Governor’s Executive Order No. 2375 and Reset Aside to County of Kauai, Department of Water for Water Tank Purposes; After-the-Fact Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative for Utility Purposes; and Issuance of Immediate Construction Right-of-Entry to County of Kauai, Department of Water; Kalaheo Homesteads, 1st Series, Koloa, Kauai, Tax Map Key 4th/2-4-4: portion 5.

Mr. Yada reminded the Board action on this item was deferred from the last board meeting as there was questions as to whether terms and conditions of the permit were met. Mr. Yada noted except for failing to obtain the appropriate disposition all other conditions were met. Mr. Yada recommended the Board approve of and recommend to the Governor the issuance of an executive order withdrawing .412 acres from Governor’s Executive Order No. 2375 and setting aside the subject lands to the County of Kauai, Department of Water, authorize the issuance of a perpetual, non-exclusive easement to Kauai Island Utility Cooperative for utility purpose and authorize the issuance of an immediate construction right-of-entry to the County of Kauai, department of Water.

Unanimously approved as submitted (Agor/Martyn).

Item D-4: Withdrawal from Governor’s Proclamation of Forest Reserve dated March 9, 1906 and Reset Aside to County of Kauai, Department of Water for Water Tank Purposes; After-the-Fact Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative for Utility Purposes, Kapaa Homesteads, 1st Series, Kawaihau, Kauai, Tax Map Key: 4th/ 4-1-1: por. 1.

The Board amended any reference to “tank” and replaced it with “well”

Unanimously approved as amended (Agor/Johns).

Item E-1: Malaekahana State Recreation Area (MSRA), Laie, Oahu – Approval of Selected Bidder per Request for Qualifications/Proposal (RFQ/RFP) for Development, Operation and Maintenance of area.

Dan Quinn, Administrator for the Division of State Parks communicated that Malaekahana State Recreational Area (MSRA) is comprised to two sections the Kahuku section (which has been operated by a series of non-profit organizations) and the Kalanai section (operated by the State). At its December 2003, meeting the Board approved a public process for the issuance of an RFQ/RFP process. In August 2004, State Parks issued thirteen bid packages, which resulted in four bidders being qualified to submit at RFP. At the deadline for RFP submittals there was only one bidder, Maleakahana Partners, L.L.C. (MP). Per Board instructions, an evaluation committee made up of 2 staff members from State Parks, 1 staff from Engineering and 2 community members have been working with MP to develop a plan for the park. Mr. Quinn noted that currently the Kahuku Section of the park is under a gratis month to month revocable permit to Lanihuli Community Development Corp. whose Present is also the Chief Operating Officer of MP. Mr. Quinn disclosed during Lanihuli’s tenure at the park they were fined by the

Department of Health for burying debris on the premises, which have since been paid. Mr. Quinn recommended the Board confirm MP as the “Selected Bidder” and proceed per the RFQ/RFP subject to the conditions listed in staff’s submittal.

Craig Chapman, representing Malaekahana LLC went over his planned vision for the Kahuku and Kalanai section of Malaekahana State Parks. Mr. Chapman brought pictures of the proposed cabins and well as the set up of the campgrounds. He informed the Board that during the demolition of the dilapidated cabins the park will not be closed. Mr. Chapman revealed his belief that the entire project should take two years to complete.

The Board asked Mr. Chapman if he was able to take his proposal out to the various community organizations for input. Mr. Chapman pointed out he submitted his proposal to the Koolau Neighborhood Board two weeks ago but at their monthly meeting, last night they did not have quorum at the meeting.

Mr. Quinn informed the Board if approval is granted to confirm MP as the selected bidder for MSRA they will need to complete an Environmental Impact Statement at which time the community will be able to provide comment.

Dr. Jim Anthony, Executive Director of Hawaii Laie Ikawai Association let the Board know there are several troubling aspects to this application at this time. Mr. Anthony believes this application falls short of the necessary level of disclosure the Board should have. Dr. Anthony told the Board he feels the applicant should have contacted and consulted with the various communities of the windward side of the island. Dr. Anthony told the Board the public is entitled to know who are the principles of MP, Hawaii Yurt Adventures and the John Hoffee Trust and where their money comes from. He told the Board their only reasonable course of action today would be to defer action on this item until answers to his questions are obtained.

The Board had some concerns that the various community associations did not have adequate time to review the proposed project and would like to see more community input. The Board asked the applicant to attend various community meetings on the windward side with the proposed plan for Malaekahana and obtain feed back on what the community thinks of the proposal.

Russell Tsuji, Deputy Attorney General informed the Board once a bidder is selected there will be a six-month window to negotiate a lease. He also noted a six month extension on negotiations can be requested and granted giving the lessee and the State a one year window. Mr. Tsuji also stated an Environmental Impact Statement (EIS) has to be done before the execution of the lease. He also let it be known he is looking into the possibility of entering into a development agreement whereby the lease form would be already completed but be contingent upon the completion of the EIS and its results.

Written testimony was received from Reb Bellinger, Jill Wessel, Nalani Leonard, DeeDee Letts, Koolauloa Hawaiian Civic Club, Creighton Mattoon, Shannon Wood and Mike and Mericia Palma-Fuller.

The Board amended the Recommendation Section by

- 1) Deleting Recommendation 1)**
- 2) “[2.] 1. Staff shall develop the assignment criteria for a third party appraisal with MP bearing the cost of the appraisal, staff to choose the appraiser. This appraisal will be used for the Development Agreement and negotiation of the lease terms and conditions.”**
- 3). “[3.] 2. Staff shall negotiate the terms and conditions of the development agreement and lease by incorporating the community’s recommendations obtained through the public process. The final recommendation of the development agreement and lease shall be brought to the Board for approval. [~~Final Development Agreement and lease terms and conditions to be brought back to the Board for approval.~~]**

Unanimously approved as amended (Johns/Martyn).

Item L-1: Approval for Award of Construction Contract Job No. 40-OB-A1 Boating Pump-Out Facility, Keehi Small Boat Harbor, Honolulu, Hawaii.

Item L-2: Approval for Award of Construction Contract – Job No F46B657A, Kokee State Park Resurface Kalalau Parking Lot, Waimea, Kauai, Hawaii.

Unanimously approved as submitted (Johns/DeMello).

Item F-2: Request for Approval to Amend the Funding Source to Include State General Fund Monies for Contract No. 53058 with the University of Hawaii (UH) to Develop a Statewide Aquatic Wildlife Conservation Strategy.

Unanimously approved as submitted (Johns/Martyn).

Item D-3: Sale of Remnant to Dana R. and Alison H. Nadeau, Wailua Half Acres Units I & II, FP 1472 & 1475, Wailua, Kawaihau, Kauai, Tax Map Key 4th/4-2-14: por. 80.

The Board amended the Recommendation Section

“6. Incorporate the comments of the Department of Public Works.”

Unanimously approved as amended (Johns/Martyn).

Item D-5: Approval of Lease of Private Property with Kaneshiro & Sons Enterprise, Ltd., on Behalf of the Department of Human Services, for Warehouse/File Storage Purposes at Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-2-40:36.

The Board amended the Recommendation Section by deleting Recommendation 1) and renumbering the remaining items.

Unanimously approved as amended (DeMello/Johns).

Item D-13: Cancellation of Grant of Non-Exclusive Easement Bearing LOD No. 27975 and the Issuance of a Perpetual, Non-Exclusive Easement to Kendrick Wai Kin Lee and Kelley Kathleen Lee for Access and Utility Purposes, Situated at Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-035:13.

The Board amended the Recommendation Section

“3.E. Grading of the easement shall be coordinated and reviewed with the Department of Agriculture.”

Unanimously approved as amended (Johns/DeMello).

Item D-7: Grant of Perpetual, Non-Exclusive Easement to Gotthard Diethelm and Gerda V.T. Diethelm for Access and Utility Purposes, Hana, Maui, Tax Map Key: (2) 1-3-7: portion 1.

Item D-8: Cancellation of Revocable Permit No. S-3621 to Department of Transportation-Harbors Division, Set Aside to the Department of Land and Natural Resources-Division of Boating and Ocean Recreation, and Issuance of a Management Right-of-Entry, Dewey Lane, Waikiki, Oahu, Tax Map Key: (1) 2-6-010: Roadway.

Item D-10: Grant of 55-year Term, Non-Exclusive Easement to American Trust Co. of Hawaii, Inc. for Seawall Structure Purposes, Kaneohe Bay, Oahu, Tax Map Key: 3-7-02:43 seaward.

Item D-14: Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for the Establishment, Preservation and Protection of Kawainui Marsh as part of the Kawainui Marsh Resource Management Plan, Kailua, Oahu, Tax Map Key: (1) 4-2-16:02.

Item D-15: Amend Prior Board Action of August 24, 2001, Item D-29; Issuance of Leases to Association of Apartment Owners of Kauhale Beach Cove for Private Noncommercial Piers Purposes Pursuant to Kaneohe Bay Piers Amnesty Program, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-3:11.

Item D-16: Amend Prior Board Action of February 25, 2005, under Agenda Item D-8, for Grant of Term Non-Exclusive Easement to Frank and Miriam Ryder, Kaneohe, Oahu, TMK: 1st/4-7-10:34 Seaward.

Item D-18: Amend Prior Board Action of July 30, 2004 under Agenda Item D-17 for Access and Utility Purposes, Waianae-Kai, Waianae, Oahu, Tax Map Key: 8-5-05:16.

Item D-19: Minimum Rent Policy for New Dispositions (Statewide).

Item D-20: Mutual Cancellation of General Lease No. S-4948, Pearl City Youth Complex, Lessee, for Youth Athletic and Recreation Purposes, Ewa, Oahu, TMK: (1) 9-7-19:35.

Unanimously approved as submitted (Johns/Martyn).

There being no further business, Chairperson Young adjourned the meeting at 2:04 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources